

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

RAFAEL TORRES,

NO. CIV. S-04-2670 FCD GGH

Plaintiff,

MEMORANDUM AND ORDER

UNION PACIFIC RAILROAD  
COMPANY.

Defendant.

-----oo0oo-----

On September 29, 2006, the court held the final pretrial conference in this matter. At said conference, it became apparent to the court that the parties disputed a central legal issue in this case: whether plaintiff could recover under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq., future lost wages that accrued after his discharge from the defendant railroad company. The court determined that resolution of this legal issue prior to trial was necessary. The parties also indicated that they believed resolution of the issue may

111

111

1 assist in their settlement negotiations.<sup>1</sup> As such, the court  
2 postponed issuing a final pretrial conference order and set a  
3 briefing schedule and hearing date for a formal motion on the  
4 issue.<sup>2</sup> (Minute Order, filed Sept. 29, 2006.)<sup>3</sup>

5 By the instant order, the court now issues its decision,  
6 finding that plaintiff may seek future lost wages accruing after  
7 his termination because his FELA claim asserted herein relates to  
8 the personal injuries he sustained in the subject accident rather  
9 than his termination.

10 In this action, plaintiff Rafael Torres brings a claim under  
11 FELA for injuries he sustained during the course and scope of his  
12 employment for defendant Union Pacific Railroad Company.  
13 Specifically, plaintiff alleges that while operating a handbrake  
14 on a railroad car the connection chain broke, causing him to lose  
15 his balance and injure his neck. Pursuant to a "Stipulated  
16 Admission of Negligence,"<sup>4</sup> defendant concedes its negligence  
17 under FELA because the subject chain on the handbrake failed  
18 during the incident; defendant also concedes plaintiff was not

---

19  
20 <sup>1</sup> The parties agreed to attend a settlement conference  
before Magistrate Judge Hollows on November 27, 2006; that  
21 conference was later continued due to the parties'  
unavailability; it is now scheduled before Magistrate Judge Drozd  
22 on December 21, 2006.

23 <sup>2</sup> However, after reviewing the parties' submissions, the  
court finds that oral argument will not be of material  
assistance, and therefore it submits the matter on the papers.  
24 E.D. Cal. L.R. 78-230(h).

25 <sup>3</sup> The court set the matter for a further final pretrial  
conference on December 8, 2006. However, in light of the  
26 continued date for the settlement conference, the court continues  
the final pretrial conference and trial, as set forth below.

27  
28 <sup>4</sup> Ex. 2 to Joint Pretrial Conf. Stmt., filed Sept. 22,  
2006.

1 negligent in the incident. However, defendant denies that  
2 plaintiff suffered any injury during the incident or that the  
3 incident was a cause of plaintiff's alleged injury. Defendant  
4 also disputes the nature and extent of plaintiff's alleged  
5 injury, and affirmatively alleges that plaintiff has failed to  
6 mitigate his damages, if any, as required by FELA. Thus, this  
7 matter proceeds to trial only as to the issues of causation and  
8 damages.

9 With respect to the issue of damages, defendant argues that  
10 the Railway Labor Act ("RLA") precludes plaintiff from recovering  
11 lost wages accruing subsequent to his termination. Following an  
12 administrative hearing pursuant to the RLA,<sup>5</sup> defendant terminated  
13 plaintiff on September 23, 2004. Plaintiff was terminated for  
14 dishonesty, having been found to have exaggerated the extent of  
15 his personal injuries sustained in the subject incident.  
16 Plaintiff administratively appealed his termination but the  
17 termination was affirmed by a Public Law Board ("PLB")<sup>6</sup> on  
18 February 10, 2006. Defendant contends that these administrative  
19 proceedings conducted by the railroad pursuant to the RLA bar  
20 plaintiff's claim for lost wages accruing after his discharge for  
21

---

22       <sup>5</sup> The RLA provides a comprehensive framework for the  
23 resolution of labor disputes in the railroad industry. In  
24 general, the RLA deals with railroad employee disputes arising  
25 out of the formation or interpretation of collective bargaining  
26 agreements. See Atchison, Topeka and Santa Fe Ry. Co. v. Buell,  
27 480 U.S. 557, 562-63 (1987).

28       <sup>6</sup> A PLB is composed of a labor member, a railroad member,  
29 and a neutral member and serves as an arbitral tribunal that  
30 reviews the outcome of a railroad's investigative hearing to  
31 ascertain whether the result is consonant with the terms of the  
32 parties' collective bargaining agreement. Kulavic v. Chicago &  
Illinois Midland Ry. Co., 1 F.3d 507, 513 (7<sup>th</sup> Cir. 1993).

1 dishonesty.

2 The court does not agree. Preliminarily, the court notes  
3 that, contrary to defendant's arguments, there is no Ninth  
4 Circuit authority directly on point.<sup>7</sup> As such, the court applies  
5 herein authority from other jurisdictions which have addressed  
6 the precise question at issue. In particular, the court finds  
7 the decision in Pothul v. Consolidated Rail Corp., 94 F. Supp. 2d  
8 269 (N.D. N.Y. 2000) persuasive. There, the railroad moved for  
9 partial summary judgment precluding the plaintiff from seeking  
10 recovery under FELA for future wages and benefits that accrued  
11 after his discharge from the company for insubordination. Id.  
12 Like defendant here, the railroad in Pothul argued "'[i]t would  
13 be a miscarriage of justice to allow a man found guilty of  
14 insubordination-and consequently dismissed-to seek to recover  
15 future lost wages he has no right or opportunity to accrue.'"  
16 Id. at 271. The district court disagreed, holding that:

17     ///

18     ///

19     ///

20     ///

21

22

23

---

24     <sup>7</sup> In Wharf v. Burlington Northern Railroad Co., 60 F.3d  
25 631, 635 (9th Cir. 1993), the court simply recognized that the  
26 RLA does not limit an employee's *injury*-related damages. Such  
27 damages may include loss earnings so long as the "loss of  
28 earnings was caused by [the railroad's] negligence." Id. at 638.  
In Wharf, the plaintiff employee was terminated by the railroad  
during the closing arguments of the FELA trial. Id. at 634. As  
such, Wharf did not involve the question of whether a PLB  
decision affirming an employee's discharge precluded recovery for  
lost wages accruing subsequent to the termination.

1 Because Plaintiff brings a claim pursuant to FELA<sup>8</sup>  
2 to recover future lost wages and benefits related  
3 to his *personal injuries* rather than his termination,  
4 that claim is not barred based on the previous  
5 disciplinary hearing conducted by [the railroad]  
6 pursuant to the RLA.

7 Id. at 272 (emphasis added).

8 Critical to the court in Pothul was the fact that the  
9 plaintiff did not seek to relitigate the issue of his dismissal  
10 for insubordination.<sup>9</sup> Rather, by his FELA claim, he sought to  
11 "recover damages he sustained in an accident that occurred in  
12 the course of his employment." Id. at 271. In that regard, he  
13 sought to recover, *inter alia*, future lost wages and benefits he  
14 would have earned with the defendant had he not been injured and  
15 become permanently disabled. Id. at 272. As such, the court  
16 held that the plaintiff's lawsuit was based only "on personal  
17 injuries, not wrongful termination," and accordingly was not  
18 barred by the RLA proceedings. Id. (citing Buell, 480 U.S. at  
19 564-67 [holding employee's claim for personal injuries falls  
20 under FELA not the RLA]); accord Norfolk Southern Ry. Co. v.  
21 Schumpert, 270 Ga. App. 782, 787 (Ga. Ct. App. 2004) (finding no  
22 error in the trial court's admission of the plaintiff's possible

---

23 <sup>8</sup> FELA provides a federal remedy for railroad workers who  
24 suffer personal injuries as a result of the negligence of their  
25 employer or their fellow employees. Buell, 480 U.S. at 561. In  
pertinent part, FELA provides: "[e]very . . . railroad . . .  
shall be liable in damages to any person suffering injury while  
he is employed by any such carrier in such commerce . . . for  
such injury or death resulting in whole or in part from the  
negligence of the officers, agents, or employees of such  
carrier." 45 U.S.C. § 51 (1986).

26 <sup>9</sup> The plaintiff in Pothul was charged with  
27 insubordination for failing to attend a scheduled medical  
28 evaluation, which was intended to determine the nature and extent  
of the plaintiff's injuries from the accident. Id. at 270.

1 future earnings from the railroad despite plaintiff's termination  
2 eight months after the injury for violating company policies).<sup>10</sup>

3 The New York district court's opinion in Pothul is in accord  
4 with other courts that have considered similar issues. For  
5 example, in Kulavic v. Chicago & Illinois Midland Ry. Co., the  
6 Seventh Circuit considered whether an arbitral decision under the  
7 RLA upholding an employee's discharge had any preclusive effect  
8 on the employee's claim under FELA. 1 F.3d 507 (7<sup>th</sup> Cir. 1993).  
9 Applying principles of res judicata and collateral estoppel, the  
10 court held that the railroad had not demonstrated that the  
11 procedures provided by the RLA "were sufficiently protective" of  
12 the plaintiff's rights and thus, the RLA proceedings could have  
13 no preclusive effect on the FELA action. Id. at 517. In so  
14 holding, the court remanded the matter for a new trial on damages  
15 in accordance with the opinion. Id. at 520. Previously, the  
16 trial court barred the employee from seeking lost earnings,  
17 fringe benefits, and loss of earning capacity after his  
18 discharge. Id. at 512. Pursuant to the Seventh Circuit's  
19 decision, such damages would now, presumably, be recoverable as  
20 the RLA proceedings were held to have no preclusive effect on the  
21 employee's FELA claim. Accord Graves v. Burlington Northern &  
22 Santa Fe Ry. Co., 77 F. Supp. 2d 1215 (E.D. Okl. 1999) (finding  
23 that the plaintiff's claim under FELA for personal injuries  
24 caused by the defendant's negligence was not barred by the  
25 previous RLA disciplinary hearing finding the employee filed a

26  
27 <sup>10</sup> The plaintiff in Norfolk was terminated for not  
28 reporting the accident and for misrepresenting the reason he had  
missed work. Id.

1 false injury report).

2 Defendant's authorities, cited to the contrary, are  
3 distinguishable. In Lewy v. Southern Pacific Transp. Co., 799  
4 F.2d 1281 (9<sup>th</sup> Cir. 1986), the railroad employee, who was injured  
5 in a collision and subsequently discharged, brought an action  
6 under FELA against the railroad to recover for injuries sustained  
7 in the collision *and* for *aggravation* of those injuries resulting  
8 from the discharge. Id. at 1287. The Ninth Circuit held that  
9 the plaintiff's latter *discharge*-related damages were not  
10 recoverable under FELA as the RLA's administrative grievance and  
11 arbitral procedures provide the "exclusive remedy" for wrongful  
12 discharge claims. Id. at 1294.<sup>11</sup> Here, plaintiff does not  
13 allege such damages. Indeed, his claim, like the plaintiff in  
14 Pothul, seeks recovery for his personal injuries sustained in the  
15 accident not any injury attributable to his subsequent  
16 termination.

17 As the court finds that the RLA proceedings do not bar  
18 plaintiff's claim for future lost wages accruing subsequent to  
19 his termination, the court likewise finds that the fact of  
20 plaintiff's termination, and the reasons therefor, are  
21 inadmissible in this action. Fed. Evid. R. 403. Such evidence  
22 is excludable as unduly prejudicial because plaintiff was  
23 discharged for conduct involving the very injuries he seeks  
24 recovery for in this action.

25  
26  
27 

---

<sup>11</sup> In so holding, the court expressly rejected the Second  
28 Circuit's decision in Sharkey v. Penn Central Transp. Co., 293  
F.2d 685 (2<sup>nd</sup> Cir. 1974), also relied on by defendant. Lewy, 799  
F.2d at 1294.

Moreover, were the court to allow defendant to introduce evidence concerning plaintiff's termination, FELA's purposes would be directly subverted. FELA provides railroad employees with the right to seek recovery in federal court for injuries sustained by a railroad's negligence. Here, plaintiff's termination was based on the precise incident and claimed injuries at issue in this case. Thus, any reference to said administrative proceedings and findings would invade the province of the jury. In this regard, Graves, discussed above, is most factually on point. There, the plaintiff was terminated for filing a false injury report involving the subject incident. 77 F. Supp. 2d at 1217. Particularly in cases like this one and Graves, there are clear grounds to exclude evidence of the termination since the very same issues are being litigated in the FELA action.

16 Now that this dispositive legal issue is resolved (and  
17 related evidentiary issues), the court will conduct a further  
18 final pretrial conference on January 26, 2007 at 2:30 p.m. The  
19 parties are directed to file a revised joint final pretrial  
20 conference statement, considering the court's orders herein, on  
21 or before January 19, 2007. Trial of this matter is continued to  
22 April 10, 2007 at 9:00 a.m.

23 IT IS SO ORDERED.

24 | DATED: November 17, 2006

  
FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE